U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Georgia that is engaged in importing and distributing garments from the parent company. The petitioner claims that it is an affiliate of the beneficiary's foreign employer, located in Mumbai, India. The petitioner now seeks to employ the beneficiary as president-chief executive officer for one year.

The director denied the petition concluding that the petitioner did not submit evidence that established: (1) the size of the U.S. investment and the foreign entity's financial status are sufficient to support the beneficiary in a primarily managerial or executive capacity within one year of approval of the petition; (2) the beneficiary's foreign employer would continue to do business following the beneficiary's transfer to the United States; and (3) the beneficiary's assignment in the United States would be temporary.

On appeal, counsel states that the record demonstrates that the foreign entity has sufficient funds to remunerate the beneficiary and commence doing business in the United States. Counsel also states that the parent company previously transferred funds to the petitioning organization, and that the foreign company continues to do business in India. Counsel submits a brief and additional evidence on appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Moreover, pursuant to the regulation at 8 C.F.R. § 214.2(l)(3)(v), if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation;

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The first issue in this proceeding is whether the size of the U.S. investment and the financial status of the foreign entity are sufficient to support the beneficiary in a primarily managerial or executive position.

On the nonimmigrant petition filed April 5, 2002, the petitioner stated that the beneficiary would receive an annual salary of $30,000 for his employment as the petitioner's president-chief executive officer. In an accompanying letter, dated March 13, 2002, the partner of the foreign entity stated that funds in the amount of $25,000 had been transferred by the foreign entity to the petitioning organization to assist in the start-up of the company. The petitioner submitted a copy of a Bank of America bank statement, titled "Transaction History," which reflected a wire transfer on January 28, 2002 in the amount to $25,000 to an individual account held by the beneficiary. The petitioner also submitted financial documents pertaining to the foreign entity.

In a request for evidence dated June 29, 2002, the director asked that the petitioner provide evidence of the funding or capitalization of the U.S. entity, such as wire transfers that reflect the transfer of funds from the foreign entity, copies of checking and savings account balances and bank statements, and evidence of foreign entity's commitment to providing financial support. The director also noted that the source of the wire transfer had not been identified in the bank statement previously provided.

Counsel for the petitioner responded on September 24, 2002 and again submitted the January 28, 2002 wire transfer. Counsel stated that the transfer "did not come directly from India as Indian government regulation prohibits large transfer of funds irrespective of use." Counsel explained that in India, companies must transfer small amounts of money to other countries prior to transferring the funds to the United States. Counsel states that in the instant matter the transfer was made from a New York bank account, but "clearly orginate[d] from Indian parent resource funds."

In addition, counsel provided a list of the petitioner's prospective employees, including a sales manager, a warehouse manager, three sales representatives, two retail store managers, two retail assistant store managers, six sales clerks and cashiers, four shipping and receiving clerks, an office manager-accountant, and a receptionist.

In a decision dated October 28, 2002, the director stated that the petitioner "did not submit evidence that established the size of the United States investment and the financial ability of the foreign entity to remunerate the [beneficiary] and to commence doing business in the United States." The director noted that as evidence of the foreign entity's monetary contribution to the U.S. entity, the petitioner submitted only a copy of a bank statement, which did not identify the source of the funds. The director also noted that the bank statement identified the beneficiary as the recipient, rather than the petitioning organization. The director consequently concluded that the petitioner did not demonstrate the financial ability of the U.S. entity to support the beneficiary in a primarily managerial or executive capacity within one year of approval of the petition, nor did the petitioner demonstrate the foreign entity's ability to remunerate the beneficiary and commence doing business in the United States.

In an appeal filed November 27, 2002, counsel disputes the director's requirement that the petitioner provide documentation identifying the source of the transferred funds and evidence that the funds were received by the petitioner rather than the beneficiary. Counsel contends that the regulations do not require such documentation, and states that the petitioner need only provide information on the size of the U.S. investment and the foreign company's ability to pay the beneficiary and commence doing business. Counsel asserts that the previously submitted evidence satisfies the regulatory requirements, and states that the petitioner will transfer additional money to the petitioning organization upon approval of the petition. Counsel submits a Certificate of Deposit Copy and Certificate of Deposit Signature Card dated November 23, 2002 and titled in the name of the petitioning organization as evidence that the petitioner is the holder of the transferred $25,000.00. Counsel also submits a profit and loss statement and balance sheet for the foreign company as evidence of the foreign company's ability to remunerate the beneficiary and commence doing business in United States.

On review, the record does not substantiate counsel's claim that the U.S. investment is sufficient to support the beneficiary in a primarily managerial or executive capacity, or that the foreign entity has the financial ability to remunerate the beneficiary and commence doing business in the United States.

The record contains insufficient documentation regarding the U.S. company's financial status. The sole document in the record pertaining to the petitioner's financial status is the certificate of deposit submitted by counsel on appeal. This document is ineffective in establishing the size of the U.S. investment, as it indicates only that the petitioner had $25,000 available on November 23, 2002 to purchase a twelve-month certificate of deposit. The present petition was filed on April 5, 2002. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Moreover, as the petitioner's certificate of deposit does not mature until November 23, 2003, the funds are not liquid and readily available to the petitioner. Therefore, the petitioner's ownership of a certificate of deposit has no relevance in establishing whether the size of the petitioning organization may support the beneficiary in a managerial or executive capacity.

Additionally, the Bank of America statement has little value in establishing the size of the U.S. investment. As addressed by the director, the beneficiary was the recipient of the transferred $25,000.00. There is no evidence that the beneficiary subsequently transferred the funds to the petitioning organization. Counsel has neglected to provide any documentation, such as account statements or business records, pertaining to the size of the U.S. investment. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Moreover, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Although counsel submitted the foreign entity's financial statements, counsel failed to provide a translation in U.S. dollars. The regulation at 8 C.F.R. § 103.2(b)(3) states that any document containing foreign language shall be accompanied by a full English translation, which has been certified by a translator. As the only financial information in the record is identified in Indian rupees, it has no significance on the analysis of the foreign entity's financial ability to remunerate the beneficiary and commence doing business in the United States. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). For this additional reason, the AAO cannot conclude that the foreign entity's financial status is sufficient to support the beneficiary in a primarily managerial or executive position within one year of approval of the petition.

The AAO notes that counsel submitted additional evidence following the filing of Form I-290B, Notice of Appeal to the Administrative Appeals Unit, on November 27, 2002. Counsel did not indicate on Form I-290B that additional evidence would be submitted, nor did counsel request additional time to submit evidence. Pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(vii), counsel or the affected party may make a written request to the AAO for additional time to submit a brief. As counsel did not make a written request for additional time to submit evidence, the subsequently filed evidence will not be considered. The record is considered complete on November 27, 2002, at the time of counsel's filing Form I-290B with the accompanying documentation.

Although not specifically addressed by the director, a related issue is whether the scope of the petitioning organization or its organizational structure would support the beneficiary in a primarily managerial or executive capacity within one year of approval of the petition as required in the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C)(1). Although the petitioner provided a list of prospective subordinate employees, the petitioner did not indicate whether these individuals would be hired within the year to relieve the beneficiary from performing non-qualifying job duties. Moreover, there is no evidence that the petitioner maintains sufficient funds to hire and compensate these employees. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. at 193.

The record does not demonstrate that within one year of approval of the petition the U.S. operation would support the beneficiary in a primarily managerial or executive capacity. For this reason, the appeal will be dismissed.

The AAO will next consider whether the record supports a finding that the foreign entity will continue to do business during the beneficiary's assignment abroad.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" as:

> [T]he regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The petitioner submitted with the nonimmigrant petition various invoices, packing lists, bills of lading, bills of entry, and marine cargo policies as evidence of the foreign entity's business in India. In the accompanying March 2002 letter, the petitioner stated that the foreign company would continue to operate "under the directions of the remaining partner and managers."

In the request for evidence, the director asked that the petitioner provide an explanation as to who is running the foreign business while the beneficiary is employed in the United States. Counsel did not provide a response to this specific request.

In her decision, the director stated that the record contained no evidence that the beneficiary's partner is managing the business in India, and concluded that the petitioner did not establish that the foreign entity would continue doing business during the beneficiary's absence. On appeal, counsel refers to the foreign entity's partnership agreement as evidence of the existence of another partner in India, and states that "[t]he India company is therefore operated by the other half-partner in the Beneficiary's absence."

On review, the record does not demonstrate that the foreign entity is presently doing business during the beneficiary's employment in the United States. The AAO acknowledges that the petitioner submitted documents exhibiting the sale of goods by the foreign company. However, the documents are dated during the years 1999 and 2000, the most recent being August 2000. The record is devoid of evidence that the foreign entity has been doing business since August 2000, and specifically, during the beneficiary's absence, which, according to the documentation in the record, began in August 2001 when the beneficiary was admitted into the United States as a nonimmigrant visitor for business.

In her decision, the director further stated that the petitioner has not established that the beneficiary's assignment in the United States will be temporary. The regulation at 8 C.F.R. § 214.2(l)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. Because there is no evidence of the foreign entity doing business since August 2000, it appears that there is no existing business abroad to employ the beneficiary following the completion of his assignment in the United States. Therefore, the beneficiary's stay in the U.S. does not appear to be temporary. For these additional reasons, the appeal will be dismissed.

Beyond the decision of the director, the record contains insufficient evidence that the foreign and U.S. entities are qualifying organizations as required in the regulation at 8 C.F.R. § 214.2(l)(3)(i). As addressed by counsel on appeal, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) does not specifically require that the petitioner demonstrate the source of the investment in the U.S. corporation. However, this information is significant in determining whether a qualifying relationship exists between the foreign and U.S. entities. The regulations and case law confirm that the key factors for establishing a qualifying relationship between the

U.S. and foreign entities are ownership and control. *Matter of Siemens Medical Systems, Inc.* 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); *see also Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988) (in immigrant visa proceedings). In the context of this visa petition, ownership refers to the direct and indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International,* 19 I&N Dec. at 595.

In the instant matter, the petitioner has not provided sufficient documentation that the petitioner's two shareholders actually contributed to the ownership and control of the U.S. organization in order to demonstrate a qualifying relationship between the U.S. and foreign organizations. Additionally, as previously addressed, the petitioner has not established that the foreign entity is doing business in India. Therefore, the record contains insufficient documentation that the two entities are qualifying organizations. The appeal will be dismissed for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.